

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 668 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
JAGDISH SALES AGENCIES

Versus

STATE OF GUJARAT

-----  
Appearance:

MR PRADYUMAN B BHATT for Petitioner  
GOVERNMENT PLEADER for Respondent No. 1  
SERVED for Respondent No. 3

-----  
CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 22/10/97

ORAL JUDGEMENT

Rule.

Mr.S.T.Mehta, learned AGP waives service of Rule for respondents.

This petition challenges the order dated December 7, 1996 passed by the State Government dismissing the

appeal filed by the petitioner against the order passed by the Controller of Food and Civil Supplies, Ahmedabad on February 7, 1995 confiscating commodity of the value of Rs.4000/- out of the seized commodity of value of Rs.6,165/- under Section 6A of the Essential Commodities Act.

2. The irregularities alleged against the petitioner were as under:

- (1). There was excess of six tins of cotton seed oil over and above mentioned in the stock register;
- (2). In the invoices full names and addresses of the customers were not written;
- (3). In Credit Bill No. 490 dated 17-5-1994 50 tins of ghee were sold to a firm known as M/s Mohanlal Hirji but their licence number was not given.

The authorities found the petitioner guilty of aforesaid irregularities and therefore, the impugned order was passed by the Controller of Food and Civil Supplies, Ahmedabad which is confirmed by the State Government.

3. At the hearing of the petition Mr. H.N.Rakshak has submitted that the petitioner is not having any fair price shop authorization but he was selling the aforesaid goods in the open market and none of the aforesaid items was any essential commodity for which any subsidy is given by the Government, nor was the petitioner selling any commodity which was meant for public distribution system. There is no price ceiling for any of the commodities in question and there is no allegation against the petitioner about black marketing adulteration or any serious malpractice. The breaches committed by the petitioner were technical.

4. Mr.Rakshak has also placed reliance on the circular dated September 22, 1989 issued by the Food and Civil Supplies Department, wherein it is clearly mentioned that while issuing a bill if the particulars regarding name and address of the purchaser are given but licence number of the purchaser is not given, or if licence number is given but the name and address are not given, serious view need not be taken provided such instances are not frequent. It is therefore, submitted that the omission to write Licence number of M/s. Mohanlal Hirji was not so serious as to warrant confiscation of commodity worth Rs.4000/-. It is

submitted that in any view of the matter the petitioner would have supplied the number of the Licence to the authorities within one week from today, but in view of the ensuing diwali holidays, the petitioner will do so within one month from today.

5. Mr. Rakshak learned Counsel for the petitioner also placed reliance on the decision of the Supreme Court in the case of N. Nagendra Rao & Co. Vs. State of Andhra Pradesh, AIR 1994 SC 2663, where it has been observed as under:

" Since the power (of confiscation under S.6A of the Essential Commodities Act) is very wide as a person violating the Control Orders is to be visited with serious consequences leading not only to the confiscation of the seized goods, packages or vessel or vehicle in which such essential commodity is found or is conveyed or carried, but is liable to be prosecuted and penalised under S.7 of the Act, it is inherent in it that those who are entrusted with responsibility to implement it should act with reasonableness, fairness and to promote the purpose and objective of the Act. Further, the goods seized are liable to be confiscated only if the Collector is satisfied about violation of the Control Orders. The language of the section and its setting indicate that every contravention cannot entail confiscation. That is why the section uses the word 'may'. A trader indulging in black marketing or selling adulterated goods etc. should not, in absence of any violation, be treated at par with technical violations such as failure to put up the price list etc. or even discrepancies in stock."

6. In view of the aforesaid submissions and in view of the uncontroverted facts that the breaches of the Licencing Order in question are not in respect of any essential commodity being supplied at subsidized rates or through the public distribution system, it appears that the view taken by the authorities is too harsh and contrary to the aforesaid Circular dated September 22, 1989 and also contrary to the law laid down by the Hon'ble Supreme Court in the aforesaid judgment.

In view of the aforesaid discussion, the petition is allowed. The impugned order dated February 7, 1995

passed by the Controller of Civil Supplies Department (Annexure A) and the order dated December 7, 1996 passed by the State Government (Annexure B ) are quashed and set aside.

Rule is made absolute to the aforesaid extent with no order as to costs.

...